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REC'D TN
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JUL 17 1998
Guy M. Hicks
General Counsel
EXECUTIVE SECRETARY

July 17, 1998

VIA HAND DELIVERY

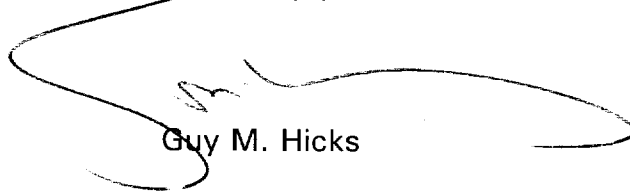
Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37238

Re: *Petition for an Investigation and/or Show Cause Order to Determine
Just and Reasonableness of Rates Charged by BellSouth
Telecommunications, Inc.*
Docket No. 98-00021

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Response to "Amended and Supplemental Petition" of American Association of Retired Persons and AT&T's Petition for Leave to Intervene. A copy has been provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH/jem

Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

IN RE: *Petition for an Investigation and/or Show Cause Order to Determine Just and Reasonableness of Rates Charged by BellSouth Telecommunications, Inc.*

Docket No. 98-00021

BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO "AMENDED AND SUPPLEMENTAL PETITION"
OF AMERICAN ASSOCIATION OF RETIRED PERSONS AND
AT&T'S PETITION FOR LEAVE TO INTERVENE

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its response to the latest filing by the American Association of Retired Persons ("AARP") and the petition of AT&T Communications of the South Central States, Inc ("AT&T") for leave to intervene. Whether couched as a request for a "show cause" order or an amendment to its original petition, the AARP's renewed demand for an earnings investigation of BellSouth simply turns a blind eye to the mandate of the Tennessee Court of Appeals. The AARP's latest filing suffers from the same legal infirmities as its original petition and should be dismissed for the reasons set forth in BellSouth's Motion to Dismiss, which is incorporated herein by reference. Once dismissed, there will be no proceeding in which AT&T can intervene, and thus AT&T's motion is moot.

Both the AARP's "amended and supplemental petition" and AT&T's petition erroneously suggest that there has been some "regulatory void" between the time BellSouth's incentive regulation plan expired in December 1995 and the effective date of BellSouth's price regulation plan. (Amended Petition ¶ 10). As a result of this alleged void, according to the AARP and AT&T, "there has not been, and will not be, any valid effective determination of the justness and reasonableness of BellSouth's rates." (Amended Petition ¶ 8; AT&T Petition ¶ 3).

The AARP and AT&T could not be more wrong. Indeed, in disposing of these claims, the Authority need look no farther than the Court of Appeals' opinion and judgment in *BellSouth Telecommunications, Inc. v. Greer*, 1997 Tenn. App. LEXIS 668 (Tenn. Ct. App., Oct. 1, 1997). There, the Court of Appeals concluded that the former Public Service Commission exceeded its authority by adjusting the earned rate of return reflected on BellSouth's Form 3.01 Report. Because the Commission had already concurred with its Staff's conclusion that BellSouth's earned rate of return on its Form 3.01 Report was 10.30%, which did not exceed BellSouth's authorized rate of return, the court held that "the Commission *should have found that BellSouth's existing rates were affordable* under Tenn. Code Ann. § 65-5-209(a) and *should have approved BellSouth's application for a price regulation plan based on BellSouth's rates existing on June 6, 1995* as required by Tenn. Code Ann. § 65-5-209(c)." *Id.* at *57 (emphasis added). The Court of Appeals remanded the case to the TRA "with directions to approve BellSouth's application for a price regulation plan." *Id.* at *61.

The following is clear from the Court of Appeals' decision: (1) BellSouth's existing rates are "affordable" within the meaning of Section 65-5-209(a), and the Commission should have so found; (2) under Section 65-5-209(a), rates that are "affordable" are, by definition, "just and reasonable"; and (3) because BellSouth's existing rates are "affordable," and hence "just and reasonable," the Commission was required, and now the TRA has been directed to, approve BellSouth's application for a price regulation plan based on BellSouth's rates existing on June 6, 1995. Thus, there has been both an administrative and judicial determination that BellSouth's existing rates are "just and reasonable," notwithstanding the AARP's and AT&T's claims to the contrary.

The true motivation of the AARP and AT&T's most recent filings should be obvious: to continue to delay BellSouth's ability to operate under price regulation in Tennessee for as long as possible, regardless of the Court of Appeals' mandate. This is abundantly clear from the AARP's insistence upon a "rulemaking proceeding" to resolve BellSouth's price regulation application (Amended Petition ¶ 17) and AT&T's suggestion that "there may be other statutory and constitutional issues to be addressed," none of which AT&T even bothers to identify. (AT&T Petition ¶ 11).

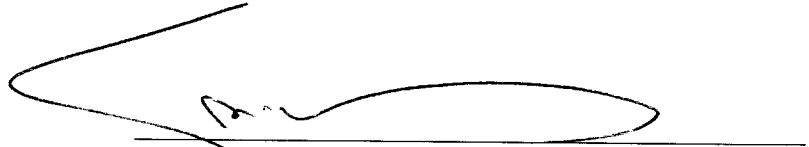
AT&T seems to argue that the TRA must now take up the issues raised by AT&T on appeal in *BellSouth Telecommunications, Inc. v. Greer*, 1997 Tenn. App. LEXIS 668, which the Court of Appeals held need not be addressed "in light of our holding that the Commission should have approved BellSouth's application for a price regulation plan based on the rates in existence on June 6, 1995." (AT&T Petition ¶ 12). Such an argument is misguided because the Court of Appeals expressly held that BellSouth's existing rates and tariffs were determined to be just and reasonable and that the Commission "is not required to make this determination again absent some specific reason to do so." AT&T never identified a "specific reason" for revisiting this issue in the Court of Appeals and has not done so here.

While the AARP and AT&T maintain that Tennessee consumers are entitled to a determination as to the "justness and reasonableness of BellSouth's rates," they conveniently ignore that this determination has already been made. It is embodied in the record before the Tennessee Public Service Commission and the mandate of the Tennessee Court of Appeals, which are fatal to the AARP's and AT&T's theory of this case.

For the foregoing reasons, the TRA should dismiss this proceeding and deny AT&T's motion for leave to intervene as moot.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line.

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CERTIFICATE OF SERVICE

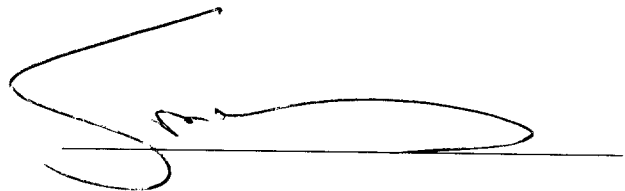
I hereby certify that on July 17, 1998, a copy of the foregoing document was served on the parties of record, via U. S. Mail, postage pre-paid, addressed as follows:

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A handwritten signature in black ink, appearing to read 'Val Sanford', is written over a horizontal line.

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